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IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY STATE OF  
OKLAHOMA

APRIL & ANDREW GRIEB, individually and )  
as parents of R.K.G and S.M.G. both minors; )  
ANDY & AMY BROOKS, individually and as )  
parents of B.O.B and A.RB, both minors; )  
JACOB & CHARISSA DEARMON, individually )  
and parents of R.T.D., S.C.D. and W.C.D., all )  
minors, )

Plaintiffs, )

v. )

COMMUNITY STRATEGIES, INC., d/b/a as )  
EPIC CHARTER SCHOOLS, an independent )  
School District of Oklahoma, )  
Defendant. )

FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

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CASE NO.: CV-2019-2239

Judge: Aletia Haynes Timmons

BRIEF IN SUPPORT OF  
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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October 11, 2019

## TABLE OF AUTHORITIES

### CASES

BOARD OF COM'RS OF CARTER COUNTY V. WOODFORD 1933 OK 138, 11, 25 P.2d 1057.....	6
BOARD OF EDUCATION OF INDEPENDENT SCHOOL DISTRICT NO. 52 V. ANTONE 384 P.2D 911 (1963).....	13
GURNEY V. FERGUSON 1941 OK 397, 122 P.2D 1002, 1003 .....	8, 12
SWANSON V. GUTHRIE INDEPENDENT SCHOOL DISTRICT 942 F. SUPP. 511 (W.D. OKLA. 1996). ....	13

### CONSTITUTIONAL PROVISIONS

OKLA. CONST. ART. 1, § 5 .....	5, 12
OKLA. CONST. ART. II, § 5 .....	7
OKLA. CONST. ART. 13, § 1 .....	5, 12

### STATUTES

OKLA. STAT. TIT. 70, § 3-136(A)(9).....	10
OKLA. STAT. TIT. 70, § 3-140(A) .....	10
OKLA. STAT. TIT. 70, § 3-140(D).....	15

## TABLE OF CONTENTS

INTRODUCTION.....	2
STATEMENT OF UNDISPUTED FACTS.....	2
ARGUMENT AND AUTHORITIES.....	5
PROPOSITION I.....	9
UNENROLLMENT OF STUDENTS FOR SIMPLY BEING DUALY ENROLLED IN EPIC PUBLIC SCHOOL AND A PRIVATE EDUCATIONAL PROGRAM VIOLATES THE OKLAHOMA CHARTER SCHOOL ACT	
PROPOSITION II.....	12
UNENROLLMENT OF STUDENTS FOR SIMPLY BEING DUALY ENROLLED IN EPIC PUBLIC SCHOOL AND A PRIVATE EDUCATIONAL PROGRAM VIOLATES THE OKLAHOMA CONSTITUTION	
PROPOSITION III.....	14
UNENROLLMENT OF STUDENTS FOR SIMPLY BEING DUALY ENROLLED IN EPIC PUBLIC SCHOOL AND A PRIVATE EDUCATIONAL PROGRAM VIOLATES THE OKLAHOMA CHARTER SCHOOL ACT	
CONCLUSION .....	15

**IN THE DISTRICT COURT IN AND FOR  
OKLAHOMA COUNTY STATE OF OKLAHOMA**

**APRIL & ANDREW GRIEB, individually and  
as parents of R.K.G and S.M.G. both minors;  
ANDY & AMY BROOKS, individually and as  
parents of B.O.B and A.RB, both minors;  
JACOB & CHARISSA DEARMON, individually  
and parents of R.T.D., S.C.D. and W.C.D., all  
minors,**

**Plaintiffs,**

**v.**

**COMMUNITY STRATEGIES, INC., d/b/a as  
EPIC CHARTER SCHOOLS, an independent  
School District of Oklahoma,**

**Defendant.**

**CASE NO.: CV-2019-2239**

**Judge: Aletia Haynes Timmons**

**BRIEF IN SUPPORT OF  
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

**COME NOW** the Plaintiffs, Andrew and April Grieb, individually and as parents of R.K.G., S.M.G. and T.A.G., all minors; Andy and Amy Brooks, individually and as parents of B.O.B. and A.R.B., both minors; Jacob and Charissa Dearmon, individually and as the parents of R.T.D., S.C.D. and W.C.D., all minors, by and through their attorney of record Matthew C. Frisby, of Frisby Law Firm, P.C., and respectfully submit this brief in support of their motion for summary judgment. The Plaintiffs seek a declaratory judgment that Community Strategies, Inc. d/b/a Epic Charter Schools' (hereinafter referred to as "Epic") unenrollment of students for simply being dually enrolled in a private/home-school educational program and any provision within the Charter Contract between Epic and Oklahoma Statewide Virtual Charter School Board that prohibits the continued enrollment of students for simply being dually enrolled in a private/home-school educational program

violates the Oklahoma Constitution and the Oklahoma Charter Schools Act, 70 O.S. § 3-130 et seq..

## **I. INTRODUCTION AND SUMMARY**

This declaratory judgment action attempts to protect the right of children in Oklahoma to obtain a free public education. Each of the minor plaintiffs were enrolled in Epic, a free statewide public charter school, when they were abruptly unenrolled because they were simultaneously enrolled in or participating in a private/home-school educational program (hereinafter referred to as “private educational program”). Epic essentially told the students they cannot be enrolled in a public school if they are also, at the same time participating in a private educational program. Epic’s actions violate each of the Plaintiffs’ right to a free public education, as guaranteed by the Oklahoma Constitution and the Oklahoma Charter Schools Act.

## **II. STATEMENT OF UNDISPUTED MATERIAL FACTS**

The Plaintiffs submit the following state of undisputed facts pursuant to Rule 13 of the Rules for District Court of Oklahoma.

1. Prior to their unenrollment, Plaintiffs R.K.G. and S.M.G. met all requirements to be enrolled and were enrolled in Epic for the 2019/2020 school year and were at the same time participating in a private educational program. (See Defendant’s Answer at ¶ 15 attached as Exhibit “1”)
2. R.K.G. and S.M.G. were unenrolled by Epic based solely on their dual enrollment/participation in Epic and a private educational program. (See Exhibit “1”

at ¶ 19 and 20)

3. Prior to their unenrollment by Epic, Plaintiffs R.K.G. and S.M.G. were current on their Epic curriculum.
4. R.K.G. and S.M.G. have NOT requested their Epic curriculum be modified in any way to allow them to participate in the private educational program.
5. No public money was paid or diverted to the private educational program R.K.G. and S.M.G. were participating in or to the student (or parent/guardian of the student) by Epic on behalf of the Plaintiffs. (See Exhibit “1” at ¶ 14 and 22)
6. Neither R.K.G. nor S.M.G. used Epic as a method of generating revenue for themselves or their family. (See Exhibit “1” at ¶ 22)
7. Prior to their unenrollment, Plaintiffs B.O.B. and A.R.B. met all requirements to be enrolled and were enrolled in Epic for the 2019/2020 school year and were at the same time participating in a private educational program. (See Exhibit “1” at ¶ 16)
8. B.O.B. and A.R.B. were unenrolled by Epic based solely on their dual enrollment/participation in Epic and a private educational program. (See Exhibit “1” at ¶ 19 and 20)
9. Prior to being unenrolled by Epic, Plaintiffs B.O.B. and A.R.B. were current on their Epic curriculum.
10. B.O.B. and A.R.B. have NOT requested their Epic curriculum be modified in any way to allow them to participate in the private educational program.
11. No public money was paid or diverted to the private educational program B.O.B. and A.R.B. were participating in or to the student (or parent/guardian of the student) by Epic on behalf of the Plaintiffs. (See Exhibit “1” at ¶ 14 and 22)

12. Neither B.O.B. nor A.R.B. used Epic as a method of generating revenue for themselves or their family. (See Exhibit “1” at ¶ 22)
13. R.T.D., S.C.D. and W.C.D. met all requirements to be enrolled and were enrolled in Epic for the 2019/2020 school year and were at the same time participating in a private educational program. (See Exhibit “1” at ¶ 17)
14. R.T.D., S.C.D. and W.C.D. were unenrolled by Epic based solely on their dual enrollment/participation in Epic and a private educational program. (See Exhibit “1” at ¶ 19 and 20)
15. Prior to being unenrolled by Epic, Plaintiffs R.T.D., S.C.D. and W.C.D. were current on their Epic curriculum.
16. R.T.D., S.C.D. and W.C.D. have NOT requested their Epic curriculum be modified in any way to allow them to participate in the private educational program.
17. No public money was paid or diverted to the private educational program R.T.D., S.C.D. and W.C.D. were participating in or to the student (or parent / guardian of the student) by Epic on behalf of the Plaintiffs. (See Exhibit “1” at ¶ 14 and 22)
18. Neither R.T.D., S.C.D. nor W.C.D. used Epic as a method of generating revenue for themselves or their family. (See Exhibit “1” at ¶ 22)
19. Defendant, Epic Charter Schools, an Independent School District of Oklahoma, is a political subdivision of the State of Oklahoma with its principal place of business in Oklahoma County, Oklahoma. (See Exhibit “1” at ¶ 5)
20. As early as August 2019, Epic began unenrolling not only the minor Plaintiffs but also other students, similarly situated who were also enrolled in a private educational program. (See Exhibit “1” at ¶ 19 and 20)

21. Epic did not determine whether any of the Plaintiffs were violating 70 O.S. § 3-136(A)(9) and using Epic as a method of generating revenue for the students prior to their unenrollment. (See Exhibit “1” at ¶ 22)
22. Epic's sole justification for unenrolling the Plaintiffs was due to their dual enrollment in or participation in a private educational program. (See Exhibit “1” at ¶ 19 and 20)

### III. ARGUMENT

All children living in Oklahoma have the right to a free public education. The Constitution of the United States does not guarantee a free public education, however the Constitution along with the 14th Amendment guarantees that all children are given equal educational opportunity to education, no matter what their race, ethnic background, religion, or sex, or whether they are rich or poor, citizen or non-citizen. Where the U.S. Constitution is silent, the Oklahoma Constitution in Article 1 § 5 requires the State to establish and maintain a system of public schools, which shall be open to all children of the state. Article 1 § 5 of Oklahoma Constitution states:

Provisions shall be made for the establishment and maintenance of a system of public schools, which **shall be open to all the children of the state** and free from sectarian control ... (emphasis added).

Article 13 § 1 of the Oklahoma Constitution requires the Legislature to establish and maintain a system of free public schools wherein all children of the State may be educated. Article 13 § 1 of the Oklahoma Constitution states:

The Legislature shall establish and maintain a system of free public schools wherein **all the children of the State** may be educated (emphasis added).

The Oklahoma Supreme Court confirmed a child's right to a free education by stating "under the provisions of section 1, article 13, and section 5, article 1 of the Constitution, the Legislature is required to establish and maintain a system of **free public schools**, wherein **all children in the**



state may be educated, and which **shall be open to all children of the state.**" *Board of Com 'rs of Carter County v. Woodford Consol. School Dist. No. 36*, 1933 OK 138, 11, 25 P.2d 1057, 1059 (emphasis added).

Public schools are learning institutions funded by local, state and/or federal governments. Typically they offer general education opportunities to children in kindergarten through grade 12. Over the years, with advances in technology the idea of the traditional 8:30 a.m. to 3:30 p.m. brick and mortar public school has paved the way for "public charter schools". A public charter school is a publicly funded school that is typically governed by a group or organization under a legislative contract - a charter - with the state, district, or other entity. Charter schools must meet the accountability standards outlined in its charter. A school's charter is reviewed periodically by the entity that granted it and can be revoked if guidelines on curriculum and management are not followed or if the accountability standards are not met. In this matter, Epic's charter contract is with the Oklahoma Statewide Virtual Charter School Board. (See Contract for Charter School Sponsorship attached as Exhibit "2")

Private schools are learning institutions that are not funded or operated by federal, state or local governments. They are not paid for by public tax dollars and may or may not be subject to the same regulations that govern public schools. While not all private schools have religious affiliations, many do.

Homeschooling (also known as home education) is the education of children at home or a variety of places other than a brick and mortar school. Some homeschooling curriculums include a religious component, while some do not. A parent, a tutor or an online teacher generally conducts the homeschooling.

Epic is a free Oklahoma public school for Pre-K thru 12th grades provided in partnership with the Oklahoma Statewide Virtual Charter School Board for parents/students seeking a non-

traditional educational setting utilizing internet-based, individualized self-paced instruction provided in nearly any location. Epic's education options allows its students to learn anytime and from anywhere at their own pace. The self-paced method allows students to design their own learning experience at their own pace and according to their particular learning styles. Epic's self-paced instruction allows for and in certain instances promotes the ability of its' students to be enrolled in additional educational programs.

Epic is governed by the Oklahoma Charter Schools Act, 70 O.S. § 3-130 et seq.. Pursuant to the requirements of the Oklahoma Charter Schools Act, 70 O.S. § 3-135(A), Epic and the Oklahoma Statewide Virtual Charter School Board entered into a contract for Charter School Sponsorship, wherein the Oklahoma Statewide Virtual Charter School Board contracted to sponsor Epic as a charter school in the State of Oklahoma. The Charter Contract between Epic and Oklahoma Statewide Virtual Charter School Board among other things, includes a clause that prevents and limits the ability of certain Oklahoma students to enroll and stay enrolled in Epic. More specifically, Section 7.12 of the Charter Contract states:

Prohibition of funding home-schooled students or private school students. Pursuant to 70 O.S. § 3-136(A)(9), under no circumstances shall the Charter School and/or its program of instruction offered in accordance with the contract be used to provide or otherwise supplement instruction of home-schooled students or students enrolled in private schools, or used as a method of generating revenue for students who are being home-schooled or are enrolled in private schools. (See Exhibit "2" at page 6)

Plaintiffs believe Epic used this clause of the charter contract to justify the unenrollment of Epic students who were dually enrolled in a private educational program. The Application of this clause violates not only the Plaintiffs' Constitutional right to a free public education but also those rights of similarly situated students. Plaintiffs also submit the clause violates the Oklahoma Charter Schools Act.

Plaintiffs recognize that Article II § 5 of the Oklahoma Constitution and relevant case law

precludes the use of public funds, directly or indirectly, for the use, benefit or support of sectarian institutions. In *Gurney v. Ferguson*, 1941 OK 397, 122 P.2d 1002, 1003 the Oklahoma Supreme Court concluded there is no doubt that Article II § 5 prohibits the use of public money or property for the use of sectarian or parochial schools. However, Plaintiffs maintain and there is no evidence to support a finding that their dual enrollment provides public money or diverts public money to any of the private educational programs the Plaintiffs are participating in. To repeat so there is no misunderstanding, absolutely no public funds or funds from Epic are being diverted to any of the private educational programs the Plaintiffs are participating in. Epic admits in its Answer that **“no public funds received by the school for students enrolled in the school where paid to either any private school or to any student (or parent/guardian of any student)”** (See Exhibit “1” at ¶ 14) Epic has absolutely no evidence that any public money or property is being used, directly or indirectly, for the use benefit, or support of any sectarian or parochial educational program. Epic, via its sponsor made a decision that it was permissible to deny the Plaintiffs their right to a free public education simply based on their dual enrollment status. If public funds are not being used for the use, benefit or support of sectarian or parochial educational programs by the Plaintiffs or on the Plaintiffs behalf, what statutory authority is there to justify preventing an Oklahoma student from obtaining a constitutionally entitled free public education? If there is no statutory authority justifying the unenrollment of the Plaintiffs from the public school they were enrolled in, common sense seems to indicate such unenrollment is denying the student his/her constitutional right to a free public education, thus is unconstitutional.

Plaintiffs have found no case law prohibiting enrollment in a public school and simultaneous enrollment in a private educational program without a finding that public funds are somehow being used to directly or indirectly to benefit or support the private educational

program. In the present case, Plaintiffs maintain and there is absolutely no evidence to support the idea that public funds are or were being used to directly or indirectly to benefit or support the private educational program they were dually enrolled in. If there is no case law justifying the unenrollment of the Plaintiffs from the public school they were enrolled in, common sense seems to indicate such unenrollment is denying the student his/her constitutional right to a free public education, thus is unconstitutional.

## **PROPOSITION I**

### **Unenrollment of students for simply being dually enrolled in Epic Public School and a private educational program violates the Oklahoma Charter Schools Act**

As stated previously, Epic is governed by the Oklahoma Charter Schools Act, 70 O.S. § 3-130 et seq. ("Act"). In 1999, the Oklahoma Legislature enacted the Act. See 1999 Okla. Sess. Laws ch. 320, §§ 5 to 18 (codified as amended at 70 O.S. §§ 3-130 to 3-144). The Act authorized the creation of charter schools, which are public schools established by contract with a sponsoring entity. 70 O.S. § 3-132(C). The Act had a number of stated purposes, including "encourag[ing] the use of different and innovative teaching methods," "provid[ing] additional academic choices for parents and students," "creat[ing] different and innovative forms of measuring student learning," and "creat[ing] new professional opportunities for teachers and administrators including the opportunity to be responsible for the learning programs at the school site." 70 O.S. § 3-131. The Act exempts charter schools from "all statutes and rules relating to schools, boards of education, and school districts." 70 O.S. § 3-136(A)(5). Instead, a charter school must adopt a charter that will ensure compliance with specific requirements set forth in the Act. 70 O.S. § 3-136.

The Act places an affirmative duty on Epic to enroll students whose legal residence is within the boundaries of the State of Oklahoma and who submit a timely application. More

specifically 70 O.S. § 3-140(A) provides:

A. Except for a charter school sponsored by the State Board of Education, a **charter school shall enroll those students whose legal residence is within the boundaries of the school district in which the charter school is located and who submit a timely application**, or those students who transfer to the district in which the charter school is located in accordance with Section 8-103 or 8-104 of this title, unless the number of applications exceeds the capacity of a program, class, grade level, or building. (emphasis added)

The undisputed facts establish that (1) the Plaintiffs' were initially eligible and permitted to enroll in Epic, meaning the Plaintiffs' legal residence was within the boundaries of Epic and they submitted a timely application and (2) the Plaintiffs were current on their Epic curriculum at the time of unenrollment (See Undisputed Facts Nos. 1, 3, 6, 8, 11, and 13). In fact, each of the Plaintiffs were enrolled in Epic (had to be to be unenrolled) therefor there were no issues with the Plaintiffs meeting the initial requirements for enrollment. Therefore there is no legitimate justification for refusing to enroll or unenrolling an Epic student under 70 O.S. § 3-140(A) of the Act.

Plaintiffs recognize that 70 O.S. § 3-136(A)(9) of the Act does provide a prohibition for use of the charter school as a method of generating revenue for students who are being home schooled and could arguably be applied to those attending a private school. 70 O.S. § 3-136(A)(9) provides:

A charter school shall not be used as a method of generating revenue for students who are being home schooled and are not being educated at an organized charter school site;

However, there are no allegations, no suspicion and absolutely no evidence that any of the Plaintiffs were using Epic a method of generating revenue for the students that were being home schooled and/or dually enrolled in a private school. Further, Epic admits it did not attempt to inquire as to whether or not the parents of the affected students were using the charter school as a method of generating revenue for the students (See Exhibit "1" at ¶ 22). Therefore any attempt to

justify the unenrollment of the Plaintiffs based on 70 O.S. § 3-136(A)(9) is misplaced. Based on the admissions of Epic, that it prohibited students to enroll in Epic that were enrolled in a private school and unenrollment of students previously enrolled that were dually enrolled, the only reason for the unenrollment of the Plaintiffs was dual enrollment. Dual enrollment, in a free public charter school and a private school program, without any other factors does not, in and of itself, violate the Oklahoma Charter Schools Act. Therefore refusal to enroll or unenrolling a student for dual enrollment, without some other justification, violates the Act and violates Epic's duty under the Act to enroll students living within its boundaries and who submit a timely application.

In a 2012 Oklahoma Attorney General's Opinion, Attorney General E. Scott Pruitt was tasked with answering whether the Oklahoma Charter School Act prohibits a student enrolled in an Oklahoma charter school from accessing or receiving instruction online or supplemental face-to-face instruction at a community faith-based institution. Attorney General Pruitt decided NO that it did not. Pruitt went on to say "the Oklahoma Charter Schools Act only requires a charter school to be nonsectarian in its operations and affiliation ***but does not prohibit a charter school student from accessing or receiving instruction at a community faith-based institution***"

Question Submitted by: The Honorable Jabar Shumate, State Representative, District 73; The Honorable Mike Sanders, State Representative, District 59; The Honorable Bryce Marlatt, State Senator, District 27, 2012 OK AG 12 at ¶ 19(7).

The undisputed facts establish there was nothing under the facts and circumstances of the Plaintiffs' dual enrollment in Epic and a private educational program that justified unenrollment under the Oklahoma Charter Schools Act. Therefore, the unenrollment of the Plaintiffs by Epic and Epic's refusal to allow them to continue with their constitutionally guaranteed free public education is a violation of the Oklahoma Charter Schools Act. Because the undisputed facts

establish that there is no dispute as to any material fact herein, the Plaintiffs are entitled to summary judgment. This Court should enter its judgment declaring Epic's unenrollment of the Plaintiffs violated the Oklahoma Charter Schools Act, order them to re-enroll the Plaintiffs in Epic and enjoin Epic from preventing the enrollment or unrolling and future students for simply being dually enrolled.

## PROPOSITION II

### **Unenrollment of students for simply being dually enrolled in Epic Public School and a private educational program violates the Oklahoma Constitution**

As stated previously, all children living in Oklahoma have the right to a free public education. Oklahoma Constitution in Article 1 § 5 requires the State to establish and maintain a system of public schools, which shall be open to all children of the state. Article 1 § 5 of Oklahoma Constitution states:

Provisions shall be made for the establishment and maintenance of a system of public schools, which **shall be open to all the children of the state** and free from sectarian control ... (emphasis added).

Article 13 § 1 of the Oklahoma Constitution requires the Legislature to establish and maintain a system of free public schools wherein all children of the State may be educated. Article 13 § 1 of the Oklahoma Constitution states:

The Legislature shall establish and maintain a system of free public schools wherein **all the children of the State** may be educated (emphasis added).

The majority of the line of case law surrounding this issue deals with the prohibition of using public funds to aid or benefit sectarian institutions. In fact, it is well settled law that public funds may not be used to aid any sectarian institution. See *Gurney v. Ferguson*, 190 Okl. 254, 122 P.2d 1002 (1942). In the case of *Gurney v. Ferguson*, the Court had before it the issue of the constitutionality of a legislative enactment authorizing the transportation of students of parochial

schools on public school buses. The Oklahoma Supreme Court was again faced with the problem of transportation of students of parochial schools on public school buses in *Board of Education of Independent School District No. 52 v. Antone Okl.*, 384 P.2d 911 (1963). In this case the Court followed *Gurney supra*, in holding that:

"As we pointed out in *Gurney v. Ferguson, supra*, if the cost of school buses and the maintenance and operation thereof is in aid of the public schools, then it would seem to necessarily follow that when pupils of parochial schools are transported by them such service is an aid to that school. Any such aid or benefit, either directly or indirectly, is prohibited by the . . . Constitution of Oklahoma."

The present case bares no resemblance to *Gurney* or *Antone*, the Plaintiffs here are not seeking to use public funded transportation to their private educational program. In fact, no public funds or resources are being used or sought to benefit the private educational programs any of the Plaintiffs are participating in. No public funds or benefit of any kind has been bestowed upon the Plaintiffs while participating in the private educational programs.

The private educational programs the Plaintiffs are participating in are receiving absolutely no benefit, financial or otherwise from public money. The Plaintiffs have the ability to fund the private educational program themselves, they have not requested any financial support from Epic or from any state agency to assist the fees, services or programs associated with the private educational programs they are attending. The Plaintiffs have not asked for any special considerations with regard to attendance, participation, or the curriculum to allow them to also attend a private educational program.

The Tenth Circuit Court of Appeal focused on the question of the existence of a broad constitutional right of access to public education in *Annie Swanson v. Guthrie Independent School District No. I-1*, 942 F. Supp. 511 (W.D. Okla. 1996). There, homeschooling parents, who had previously been allowed to enroll their daughter in public school classes on a part-time basis, were denied access when a new school board adopted a policy requiring full-time



attendance. While the court agreed that the Oklahoma state constitution created a right to a free public education and protected the choice to homeschool, it held that there was no constitutional right to a free part-time public education. That case is distinguishable from the case at bar, in that the Plaintiffs here are not seeking to be part-time Epic students. The Plaintiffs were full time Epic students, expecting to do the full Epic curriculum.

There are no caveats in the Oklahoma Constitution, abridging the guarantees of a free public education to children who are dually enrolled in another educational program. There are prohibitions with regard to funding of a private school with public funds but as the undisputed material facts clearly show, there are no public funds flowing to the private educational programs Plaintiffs are participating in. The undisputed facts establish there was nothing under the facts and circumstances of the Plaintiffs dual enrollment in Epic and a private educational program that justified unenrollment under the Oklahoma Constitution or the case law that has developed regarding a students guaranteed right to a free public education. Therefore, the unenrollment of the Plaintiffs by Epic and Epic's refusal to allow them to continue with their constitutionally guaranteed free public education is a violation of the Oklahoma Constitution. Because the undisputed facts establish that there is no dispute as to any material fact herein, the Plaintiffs are entitled to summary judgment. This Court should enter its judgment declaring Epic's unenrollment of the Plaintiffs violated the Oklahoma Constitution, order them to re-enroll the Plaintiffs in Epic and enjoin Epic from preventing the enrollment or unrolling and future students for simply being dually enrolled.

### **PROPOSITION III**

**Unenrollment of students for their ability to participate in a private educational program and Epic discriminates against the Plaintiffs based on their income level in violation of the Oklahoma Charter School Act**

The Oklahoma Charter School Act prohibits discrimination or the ability of a charter

school to limit admission based on income levels. 70 O.S. § 3-140(D) provides:

D. Except as provided in subsections B and C of this section, a charter school shall not limit admission based on ethnicity, national origin, gender, income level, disabling condition, proficiency in the English language, measures of achievement, aptitude, or athletic ability.

One of the reasons the Plaintiffs are here is because of their ability to afford to participate in a private educational program. The families here have the financial means and/or appropriate income levels to pay for their students to attend and participate in additional educational programs. In practice, forcing dually enrolled students to unenroll from Epic or refusing to enroll them at all, with absolutely no creditable evidence that those students are using Epic as a method of generating revenue for those students or that the private educational program is some how receiving a benefit or financial support from public moneys, amounts to discrimination based on the Plaintiffs income levels.

Epic has not provided the Plaintiffs an explanation as to why they are being prevented from pursuing their constitutional protected right of a free public education other than the fact they were dually enrolled, which in and of itself, is not prohibited by any state or federal statute or any relevant case law. Epic's actions amount to limiting admission in Epic by the Plaintiffs based solely only the Plaintiffs economic ability to pay for the private educational program personally. Limiting admission based on a family's income level violates the Oklahoma Charter School Act. This Court should enter its judgment declaring Epic's unenrollment of the Plaintiffs violated § 3-140(D) of the Oklahoma Charter Schools Act, order them to re-enroll the Plaintiffs in Epic and enjoin Epic from preventing the enrollment or unrolling and future students based on the students' income level.

## **CONCLUSION**

Unenrolling the Plaintiffs from Epic, a free public school simply because the students

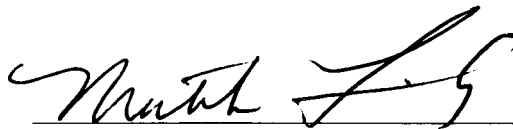
were dually enrolled in a private/home-school educational program, with absolutely no evidence the students were using the charter school as a method for generating revenue and/or no evidence that public money was being diverted to the private/home-school program used by the students, violates the express provisions of the Oklahoma Constitution and the Oklahoma Charter Schools Act. The undisputed facts establish that:

- (1) the Plaintiffs met all the requirements to be enrolled in and were enrolled in Epic Charter School, a free public school;
- (2) the Plaintiffs were unenrolled by Epic and have been prevented from attending Epic Charter School;
- (3) the only reasons for the Plaintiffs' unenrollment was the fact they were dually enrolled in a private or homeschooled educational program;
- (4) there are no allegations or findings that any of the Plaintiffs used Epic as a method of generating revenue for students or their parents;
- (5) there are no allegations or findings that any public money or property was used by the Plaintiffs to support or otherwise benefit a sectarian or parochial private educational program.

The undisputed facts establish there was nothing under the facts and circumstances of the Plaintiffs' dual enrollment in Epic and a private educational program that justified unenrollment under the Oklahoma Charter Schools Act or the Oklahoma State Constitution. Therefore, the unenrollment of the Plaintiffs by Epic and Epic's refusal to allow them to continue with their constitutionally guaranteed free public education is a violation of the Oklahoma Charter Schools Act and the Oklahoma State Constitution. Because the undisputed facts establish that there is no dispute as to any material fact herein, the Plaintiffs are entitled to summary judgment. This Court

should enter its judgment declaring Epic's unenrollment of the Plaintiffs violated the Oklahoma Charter Schools Act, the Oklahoma Constitution and is discriminatory in nature, order Epic to re-enroll the Plaintiffs and enjoin Epic from preventing the enrollment or unrolling and future students for simply being dually enrolled.

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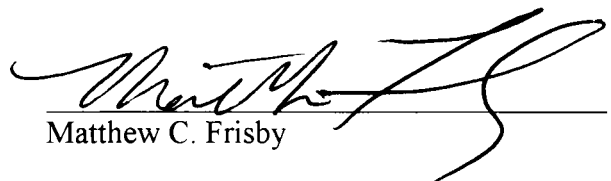
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**CERTIFICATE OF MAILING**

This is to certify that on the 10 day of October, 2019, a true and correct copy of the foregoing was mailed via the U.S. Postal Service, hand-delivered, emailed or sent via facsimile to the following:

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Attorney for Defendant

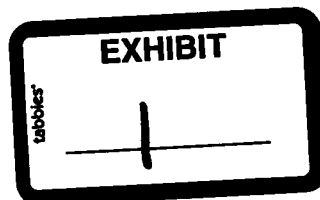


Matthew C. Frisby

**APRIL & ANDREW GRIEB**, individually and  
as parents of **R.K.G. and S.M.G.**, both minors;  
**ANDY & AMY BROOKS**, individually and  
as parents of **B.O.B and A.R.B.**, both minors;  
**JACOB & CHARISSA DEARMON**, individually and  
as parents of **R.T.D., S.C.D. and W.C.D.**, all minors,  
  
Plaintiffs,  
  
vs.  
  
**COMMUNITY STRATEGIES, INC.**, d/b/a  
**EPIC CHARTER SCHOOLS**, an  
Independent School District of Oklahoma,  
  
Defendant.

COMES NOW, Community Strategies, Inc. d/b/a Epic Charter Schools (“Epic” or “Defendant”) and for its answer to the allegations in Plaintiffs’ Petition denies each and every material allegation unless admitted herein. In further answer, Epic responds to each numbered paragraph in the Petition by number below:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.



## **FACUAL BACKGROUND**

9. No response necessary.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. Epic is without sufficient information or knowledge to either admit or deny the allegations in Paragraph 14 and therefore denies same. In further response, Epic states that no public funds received by the school for students enrolled in the school were paid to either any private school or to any student (or parent / guardian of any student).

15. Admitted.

16. Admitted.

17. Admitted.

18. Admitted.

19. Admitted. To further clarify, Epic originally took the position that the paragraph at issue did not prohibit students from being enrolled in Epic as a public school and another educational program. However, Epic was advised by representatives of its sponsor, the Statewide Virtual Charter School Board, that they disagreed in April 2019. So, Epic implemented a protocol to prohibit students to enroll in Epic that were enrolled in a private school and Epic has been vetting previously enrolled students in Epic that are dual enrolled. Once these students are identified, Epic has provided parents with a reasonable period of time to decide between Epic and the private institution. If the parent opts to stay in the private school, Epic is disenrolling the student even though the student resides in the State of Oklahoma.

20. Admitted. To further clarify, Epic originally took the position that the paragraph at issue did not prohibit students from being enrolled in Epic as a public school and another educational program. However, Epic was advised by representatives of its sponsor, the Statewide Virtual Charter School Board, that they disagreed in April 2019. So, Epic implemented a protocol to prohibit students to enroll in Epic that were enrolled in a private school and Epic has been vetting previously enrolled students in Epic that are dual enrolled. Once these students are identified, Epic has provided parents with a reasonable period of time to decide between Epic and the private institution. If the parent opts to stay in the private school, Epic is disenrolling the student even though the student resides in the State of Oklahoma.

21. Admitted.

22. Admitted. Epic has not attempted to inquire as to whether or not the parents or the affected students were using the charter school as a method of generating revenue for students. In further response, Epic states that no public funds received by the school for students enrolled in the school were paid to either any private school or to any student (or parent / guardian of any student).

23. Epic is without sufficient information or knowledge to either admit or deny the allegations in Paragraph 23 of the Petition and therefore denies same.

24. Epic is without sufficient information or knowledge to either admit or deny the allegations in Paragraph 24 of the Petition and therefore denies same.

25. Epic is without sufficient information or knowledge to either admit or deny the allegations in Paragraph 25 of the Petition and therefore denies same.

**COUNT 1: Declaratory Judgment**

26. No response is required.

27. Admitted.

28. Admitted.

29. Epic is without sufficient information or knowledge to either admit or deny the allegations in Paragraph 29 of the Petition and therefore denies same.

30. Admitted.

**COUNT 2: Injunctive Relief**

31. No response is required.

32. Epic is without sufficient information or knowledge to either admit or deny the allegations in Paragraph 32 of the Petition and therefore denies same.

33. Epic is without sufficient information or knowledge to either admit or deny the allegations in Paragraph 33 of the Petition and therefore denies same.

34. Epic is without sufficient information or knowledge to either admit or deny the allegations in Paragraph 34 of the Petition and therefore denies same.

35. Epic is without sufficient information or knowledge to either admit or deny the allegations in Paragraph 35 of the Petition and therefore denies same.

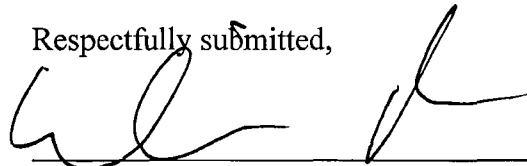
36. Epic is without sufficient information or knowledge to either admit or deny the allegations in Paragraph 36 of the Petition and therefore denies same.

37. Epic is without sufficient information or knowledge to either admit or deny the allegations in Paragraph 37 of the Petition and therefore denies same.



**WHEREFORE**, Epic respectfully requests the Court consider the issues presented in the Petition in an expedited fashion for the benefit of the students, families and the school and further such further and other relief as the Court may deem appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'W. Hickman', written over a horizontal line.

William H. Hickman, OBA No. 18395

HICKMAN LAW GROUP, PLLC

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Norman, Oklahoma 73069

Phone: 405.605.2375

Fax: 405.605.2374

[hickman@hickmanlawgroup.com](mailto:hickman@hickmanlawgroup.com)

**Attorney for Defendant**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above and foregoing was mailed and / or e-mailed this 10<sup>th</sup> day of October 2019, to the following attorneys of record:

Matthew C. Frisby  
Frisby Law Firm  
620 N. Robinson, Suite 207  
Oklahoma City, OK 73102  
(405) 488-0047  
(405) 488-0529 fax  
**Attorney for Plaintiffs**

A handwritten signature in black ink, appearing to read 'W. H. Hickman', is written over a horizontal line.

William H. Hickman

WHH\1570\2-6\Pleadings\Answer - Grieb

## CONTRACT FOR CHARTER SCHOOL SPONSORSHIP

This Contract between the Oklahoma Statewide Virtual Charter School Board and Community Strategies, Inc., the governing authority of the Epic Charter Schools ("Charter School"), shall set forth the terms and conditions of the sponsorship of the Charter School and shall constitute the Charter of Epic Charter Schools.

### 1. RECITALS

**1.1 WHEREAS** the Oklahoma State Legislature has enacted the Oklahoma Charter Schools Act set forth in **70 O.S. §3-130 et seq.**; and,

**1.2 WHEREAS** the provisions of the Oklahoma Charter Schools Act apply to all virtual charter schools formed and operated in the State of Oklahoma; and,

**1.3 WHEREAS** the Statewide Virtual Charter School Board, a state agency established under **70 O.S §3-145.1** has the sole authority to authorize and sponsor statewide virtual charter schools in this state; and,

**1.4 WHEREAS** Community Strategies, Inc., is the governing authority of the Epic Charter Schools, and its principal place of business is 4101 NW 122<sup>nd</sup> Street, Oklahoma City, Oklahoma; and,

**1.5 WHEREAS** the Charter School submitted an application for renewal of sponsorship to the Board on August 23, 2017; and,

**1.6 WHEREAS** the Charter School's authorization application was assumed at a regular meeting of the Board on April 8, 2014 and effective July 1, 2014, in accordance with the requirements of the Charter Schools Act; and,

**1.7** In consideration of the foregoing, the Parties enter into this charter contract pursuant to the terms and conditions set forth herein. All attachments and recitals to this contract are incorporated by reference and made a part of this charter contract.

### 2. DEFINITIONS

**2.1** "Applicable law" means all federal and state statutes and rules and regulations applicable to virtual charter schools organized under the Oklahoma Charter Schools Act.

**2.2** "Average daily attendance" (ADA) and "average daily membership" (ADM) shall have the meanings set forth in **70 O.S. §18-107**.

**2.3** "Board" or "Sponsor" or "Authorizer" means the Statewide Virtual Charter School Board.



A handwritten signature in black ink, appearing to be "JAH".

A handwritten signature in black ink, appearing to be "DS".

2.4 "Charter Contract" means this contract executed between the Board and the governing authority of the Charter School.

2.5 "Extracurricular activity" means any student activity, club, organization, meeting or event offered by the Charter School that is attended by students and unrelated to the Charter School's curriculum-based program of instruction set forth in Section 4 of this contract.

2.6 "Financial records" means all documents in any form relating to the funds of the Charter School, including, but not limited to, all public funds disbursed to the Charter School pursuant to state or federal law.

2.7 "Full academic year" shall have the meaning set forth at **OAC 210:10-13-2(e)**.

2.8 "Homeschool" or "home school" or "home-school" means a privately funded educational program of instruction that is: (1) provided to the child in the child's home or legal residence in lieu of public school compulsory attendance; (2) the curriculum of instruction is determined by the parent/legal guardian of the child; and (3) the instruction is primarily led by the child's parent/legal guardian or other private person designated by the parent/legal guardian of the child.

2.9 "Private school" means a school sponsored by a private organization or private individuals rather than by the government.

2.10 "Public funds" mean all local, state or federal funds that are disbursed to the Charter School.

### 3. GENERAL PROVISIONS

3.1 **Authority.** The Charter School is authorized by the Sponsor to operate a statewide virtual charter school in accordance with the terms and conditions set forth in this contract and the Oklahoma Charter Schools Act, as well as any applicable statutes or regulations pertaining to charter schools, including but not limited to all rules and regulations of the Statewide Virtual Charter School Board, codified in Title 777 of the Oklahoma Administrative Code. Any act by the Charter School or its governing board that is inconsistent with the terms of this contract or the Oklahoma Charter Schools Act or any applicable statutes or regulations pertaining to charter schools is hereby deemed a material violation of this contract and shall constitute good cause for termination of this charter contract and revocation of the charter. See 70 O.S. §3-135(A)(5).

3.2 **Term of the contract.** This contract shall commence on July 1, 2018, and automatically terminate on June 30, 2024. The contract may be renewed upon application of the Charter School in accordance with the Charter School Act and Statewide Virtual Charter School Board rules and regulations.

3.3 **Operation.** The Charter School agrees that it will begin operations on or before July 1, 2018.

#### 4. CHARTER SCHOOL PROGRAM OF INSTRUCTION

**4.1 Description of the program of instruction.** The Charter School is authorized to implement the program of instruction, curriculum and other services as specified in the Application, unless otherwise modified by this charter contract. See 70 O.S. §3-135(A)(1).

**4.1.1 Grade Levels.** Pursuant to 70 O.S. §3-136(A)(3), the Charter School will provide a comprehensive program of instruction for grades Pre-Kindergarten through 12<sup>th</sup> grade.

**4.1.2. Change to program of instruction.** Pursuant to 70 O.S. §3-136(C), any material change to the program of instruction, curriculum and other services specified in the Application or this charter contract requires Sponsor approval prior to the change.

**4.2 Graduation requirements.** The Charter School will comply with the graduation requirements set forth in 70 O.S. §11-103.6.

**4.3 Textbooks, curriculum materials and equipment.** The Charter School shall provide all enrolled students with sufficient textbooks, workbooks, materials, equipment and/or technological aids necessary to ensure delivery of the Charter School's program of instruction during every school year of operation during the term of this contract.

**4.3.1 Equipment necessary for special education and students with disabilities.** In addition to the materials provided to students in accordance with the provisions of Section 4.3, the Charter School shall provide any additional equipment or technological aids to students with disabilities as necessary to ensure equal access to the Charter School's program of instruction in accordance with the student's IEP or Section 504 plan.

**4.4 Extracurricular activities.** Nothing in this contract shall obligate the Sponsor to provide funding of extracurricular activities to the Charter School unless explicitly required by statute or regulation. The provisions of Section 8.9.1 of this contract prohibiting the Charter School from charging tuition and/or fees shall not preclude the Charter School from recovering the reasonable costs of extracurricular activities or special events offered pursuant to the provisions of this Section from participating students or their parents/legal guardians, provided that under no circumstance may the Charter School recover an amount in excess of the cost of the activity or event. Further, a student's income shall not be used as a basis for determining eligibility of a student to participate in extracurricular activities.

#### 5. CHARTER SCHOOL OPERATIONS

**5.1 Transportation.** The Charter School acknowledges that as a statewide virtual charter school, daily transportation of students to and from a school site is not required. However, the Charter School may provide transportation to students as necessary for limited circumstances (e.g., transportation of students to secure testing sites), provided that the Charter School shall not be eligible to receive transportation supplemental funds set forth the state aid

formula set forth in **70 O.S. §18-200.1**, unless funding is available and otherwise permitted by state law and disbursement is approved by the Sponsor.

**5.2 Facilities.** The Charter School acknowledges the Charter School must maintain a public school administration facility and the Sponsor is under no obligation to provide facilities, furniture, or other equipment to the Charter School unless and until the parties enter into an agreement to do so.

**5.2.1 Inventory.** No later than July 1<sup>st</sup> of each year of operation, the Charter School shall provide the Sponsor with an itemized inventory of all real and personal property leased or purchased with public funds.

**5.2.2 Lease agreements.** The Charter School shall provide the Sponsor with copies of all agreements and/or contracts governing lease and/or purchase of real property by the Charter School.

## **6. CHARTER SCHOOL MANAGEMENT AND ADMINISTRATION**

**6.1 Administration.** The Chief Administrative Officer of the Charter School is the Superintendent. The duties of the Chief Administrative Officer shall include management and administration of the Charter School.

**6.2 Code of Ethics.** The Charter School governing authority shall develop and approve a Code of Ethics and a Conflict of Interest policy.

## **7. FUNDING, MANAGEMENT, AND REPORTING**

**7.1 Management.** In accordance with the provisions of **70 O.S. §3-136(A)(6)**, the Charter School shall comply with the same state and federal statutes and regulations relating to reporting requirements, financial audits, audit procedures, and audit requirements applicable to Oklahoma public school districts unless otherwise expressly exempted by statute or regulation. In addition, the Charter School agrees to meet any additional requirements set forth herein deemed necessary by the Sponsor to ensure proper oversight and management of the Charter School's use of public funds. Such compliance requirements include, but are not limited to the following provisions:

**7.2 Fiscal year.** The Charter School shall operate on a fiscal year basis. The Charter School's fiscal year shall begin July 1<sup>st</sup> and end on June 30<sup>th</sup> of the following calendar year.

**7.3 Indebtedness.** The Charter School shall abide by the "pay as you go" fiscal year restrictions applicable to school districts and other political subdivisions set forth under Art. 10 § 26 of the Oklahoma Constitution.

**7.4 No authority to bind Sponsor.** The terms of this contract shall not be construed as either express or implied authority of the Charter School to extend the faith and credit of the Sponsor or contractually bind the Sponsor to any third person or entity. The Charter School agrees and acknowledges that the Sponsor's financial obligations to the Charter School are limited to pass through distribution of state funding as authorized by law.

**7.5 Assets of the Charter School.** Pursuant to Art. 10 §15 of the Oklahoma Constitution, the Charter School shall not apply, hold, credit or extend credit, transfer, or otherwise make use of public funds for any purpose other than operation of the Charter School.

**7.5.1 Transfer or sale of real property.** No real property obtained by the Charter School with public funds shall be sold, alienated, transferred or otherwise disposed of without prior written consent of the Sponsor.

**7.5.2 Prohibition against encumbrance.** The Charter School shall not alienate, pledge, or otherwise encumber this Charter, public funds, or assets of the Charter School procured with public funds for the benefit of any individual, or entity, including creditors.

**7.6 Reporting requirement.** The Charter School shall provide access to all finance records as requested by the Sponsor.

**7.7 Calculation of state aid.** Pursuant to 70 O.S. §3-135(A)(12), state aid funding shall be calculated and disbursed in accordance with the provisions of the Oklahoma Charter Schools Act, accompanying statutes and regulations of the Sponsor, the Oklahoma State Department of Education, the Oklahoma State Board of Education, and the terms of this contract. Calculation of state aid shall be determined by the Oklahoma State Department of Education in accordance with the provisions of the Oklahoma Charter Schools Act and accompanying Department regulations pertaining to calculation of weighted average daily membership, average daily attendance, and other applicable student counts. The Charter School agrees that it shall maintain accurate and up-to-date records of student attendance and enrollment for all student grade levels and pupil categories and immediately report any changes as necessary to ensure accurate calculation of state aid in accordance with the requirements and deadlines set forth by 70 O.S. §18-200.1 and accompanying regulations. The Charter School shall also be eligible to receive any other federal, state, or local revenues allowed by law.

**7.8 Disbursement of state aid.** The Sponsor shall disperse the state aid allocation and any other state-appropriated revenue generated by enrolled students of the Charter School, less three percent (3%) of the total foundational state aid allocation as a fee payable to the Sponsor for administrative services rendered by the Sponsor. The Charter School agrees that in the event the Charter School fails to comply with the provisions of state or federal statutes or regulations, the Sponsor may withhold funds until compliance is achieved as allowed by law.

**7.8.1 Oversight fees.** The Sponsor shall cease collection of the fee described in 7.8, beginning the month after the Sponsor's operating account, funded by the fee, accumulates to a sum greater than 120% of the current Fiscal Year Budget. Collection of the fees by the Sponsor shall resume the month after the Sponsor's operating account balance is below the 120% threshold for the remaining Fiscal Year budget, or an action by the board to resume collection has been passed in open public meeting.

**7.9 Use of public funds.** The Charter School agrees that any federal, state or local public funds disbursed to the Charter School shall be used solely and exclusively for the benefit of the Charter School. Detailed records shall be kept by the Charter School of all expenditures of public funds. In addition, records shall be kept of all expenditures of public funds by any entity associated or affiliated with the Charter School. These records shall be made available upon request by the Sponsor.

**7.10 Commingling prohibited.** The Charter School shall not commingle state funds disbursed to the Charter School with the funds of any other person or entity. The Charter School shall maintain separate and distinct accounting, auditing, budgeting, reporting, and record-keeping systems for the management and operation of the Charter School.

**7.11 Fundraising.** Subject to limitations set forth by conflict of interest statutes and regulations applicable to the Charter School and its governing body, the Charter School may accept private donations, provided, however, that private donations shall in no way be used either directly or indirectly to affect enrollment decisions or otherwise subvert the Charter School's policies and procedures pertaining to admission and enrollment.

**7.12 Prohibition of funding home-schooled students or private school students.** Pursuant to 70 O.S. §3-136(A)(9), under no circumstances shall the Charter School and/or its program of instruction offered in accordance with this contract be used to provide or otherwise supplement instruction of home-schooled students or students enrolled in private schools, or used as a method of generating revenue for students who are being home-schooled or are enrolled in private schools.

**7.12.1 Part-time enrollment.** The Charter School shall implement and enforce policies and procedures prohibiting enrollment of students on a part time basis unless otherwise expressly required by state law for the sole purpose of providing remediation pursuant to the provisions of Achieving Classroom Excellence Act in 70 O.S. §1210.524 and/or the Reading Sufficiency Act in 70 O.S. §1210.508A, *et seq.*

**7.13 Reporting.** Pursuant to 70 O.S. §3-136(A)(6) and (A)(18), the Charter School shall use the Oklahoma Cost Accounting System to report financial transactions to the Oklahoma State Department of Education and/or the Sponsor, and shall fully comply with all provisions of state law regarding school finance.



**7.13.1 Quarterly financial statement.** In addition to the reporting requirements set forth by state law, regulations of the Oklahoma State Department of Education, and regulations of the Sponsor, the Charter School shall provide the Sponsor with a quarterly financial statement that includes an itemized report of all income and expenses of the Charter School. The financial statement shall include a verification signed by the Charter School's treasurer substantially following the form provided below:

"I hereby certify under penalty of perjury under the laws of the State of Oklahoma and the United States of America that the foregoing is true and correct to the best of my knowledge as of this \_\_\_\_ day of [MONTH], [YEAR]."

**7.14 Annual audit.** Pursuant to 70 O.S. §3-135(A)(4), the Charter School shall ensure that an annual audit is conducted of the financial operations of the Charter School in accordance with the requirements of the Oklahoma Public School Audit law in 70 O.S. §22-103 and accompanying regulations. Any expense of the audit shall be borne by the Charter School. The Sponsor may require the Charter School to present the audit at a regular or special meeting of the Board.

**7.14.1** The Charter School shall be subject to requests for audit by the State Auditor's Office, and shall cooperate fully in all aspects of any request made pursuant to such audits.

**7.15 Recordkeeping.** The Charter School shall maintain all financial records necessary to demonstrate compliance with the provisions of this contract and to conduct the annual financial audits required by the Oklahoma Public School Audit law. All records pertaining to finances and accounting of Charter School funds shall be maintained for a least five (5) years from the ending date of the latest fiscal year(s) to which the record relates. The Sponsor shall have access to all financial records pertaining to the school.

**7.16 Access to records.** The Sponsor shall have access to all records of the Charter School. The Charter School shall provide any requested access to the Sponsor upon request.

## **8. COMPLIANCE WITH THE OKLAHOMA CHARTER SCHOOLS ACT**

**8.1 General.** Pursuant to 70 O.S. §3-136(A)(1), the Charter School agrees to comply with all federal, state and local statutes and regulations relating to health, safety, civil rights and insurance.

**8.2 Prohibition of religious affiliation.** Pursuant to 70 O.S. §3-136(A)(2), except as permitted by applicable law, the Charter School shall be nonsectarian in its programs, admission policies, employment practices, and all other operations.

**8.3 Accountability and assessment.** Pursuant to 70 O.S. §3-135(A)(12), the Charter School shall comply with all federal and state statutes and regulations pertaining to accountability and assessment of its students, including, but not limited to the following:

**8.3.1** The Charter School shall participate in all state testing required by the Oklahoma School Testing Program Act and accompanying Oklahoma State Department of Education regulations, including, but not limited to, testing required by the Reading Sufficiency Act in **70 O.S. §1210.508C**. The Charter School shall ensure that the number and/or percentages of students assessed meet the requirements of state and federal law and regulations. The Charter School shall provide the Sponsor with the district, school and grade level results of state assessments as provided by the Oklahoma State Department of Education. In addition, the Charter School should monitor student progress through the local assessment plan outlined in the Charter School's application. Student data shall be provided at the request of the Sponsor.

**8.3.2** The Charter School shall comply with all requirements for timely reporting of student test results to which Oklahoma public school districts are bound, including, but not limited to the provisions of **70 O.S. §1210.545**.

**8.3.3** The Charter School shall timely provide all necessary accountability and assessment data to the Oklahoma State Department of Education's Office of Accountability and Assessment as requested and in accordance with the deadlines established by the Oklahoma State Department of Education.

**8.4 Performance Framework.** Pursuant to **70 O.S. §3-135(A)(8), (A)(11), and (C)**, the Performance Framework set forth in **OAC 777:10-3-4** will be used to assess the Charter School's ability to operate in the areas of academic, financial and organizational capacities.

**8.4.1 Goals.** The Charter School will submit up to three (3) data-driven goals to be included in the Performance Framework. The goals are expected to be substantial goals for the term of the contract and agreed upon by both the Sponsor and the Charter School prior to the implementation of the contract.

**8.4.2 Board data submission.** The Charter School agrees to participate in the Sponsor's data collection program for submitting school data as required by **OAC 777:10-3-4**, and submit all requested documentation by the required due dates.

**8.5 Plan of improvement.** In the event that the Charter School fails to meet the criteria set forth in the Performance Framework during any school year during the term of this contract, the Charter School shall submit to the Sponsor a plan of improvement to be implemented during the following school year. The plan of improvement shall be incorporated into the terms of this contract, and the Charter School shall implement the plan of improvement for any school years remaining during the terms of the contract, provided that approval of a plan of improvement shall not be construed as a waiver of any rights of the parties to terminate or not renew the contract.

**8.6 Students with disabilities.** Pursuant to **70 O.S. §3-136(A)(7)**, the Charter School shall comply with all federal and state laws relating to the education of children with disabilities in the same manner as an Oklahoma public school district, including but not limited to the Individuals with Disabilities Education Act (IDEA) in **20 U.S.C. §1400**, Section 504 of the

Rehabilitation Act of 1973 in **20 U.S.C. §703**, Title II of the Americans with Disabilities Act, and Policies and Procedures of the Oklahoma State Department of Education for Special Education in Oklahoma.

**8.7 English language learners.** The Charter School shall comply with all federal and state laws pertaining to the education of students identified as Limited English Proficient and/or English Language Learners, including, but not limited to, ensuring equal access to the Charter School's program of instruction and related educational services in accordance with Title VI of the Civil Rights Act of 1964 and accompanying regulations.

**8.8 Governing body.** Pursuant to **70 O.S. §3-136(A)(8)**, the governing body of the Charter School shall be responsible for the policies and operational decisions of the Charter School.

**8.8.1 Residence.** Pursuant to **70 O.S. §3-135(A)(3)**, a majority of the governing board members shall be residents of the State of Oklahoma.

**8.8.2 Meetings.** Pursuant to **70 O.S. §3-135(A)(3)**, the governing body shall meet no less than quarterly in a public meeting, in a location within the State of Oklahoma.

**8.8.3 Notification of changes.** The Charter School shall notify the Sponsor of any changes in the governing body within five (5) business days of the date of resignation or appointment. The Charter School shall also keep the Sponsor apprised of the officers of the governing body, and any changes thereto within five (5) business days of the election, appointment or resignation.

**8.8.4 Conflicts of interest.** Pursuant to **70 O.S. §3-136(A)(17)**, the governing body of the Charter School shall be subject to the same conflicts of interest requirements as members of local public school district school boards in the State of Oklahoma, including but not limited to the provisions of **70 O.S. §5-113** and **70 O.S. §5-124**.

**8.8.5 Confidentiality of student records.** The Charter School shall comply with all provisions of federal and state law pertaining to parent/legal guardian access to student records and privacy of student records and student data, including but not limited to compliance with all provisions of the Family Education Rights and Privacy Act of 1974 (FERPA) and the Individuals with Disabilities Education Act (IDEA).

**8.9 Admission, attendance, and enrollment.** Pursuant to **70 O.S. §3-135(A)(2)**, the Charter School shall ensure that no student shall be denied admission to the Charter School on the basis of race, color, national origin, sex, sexual orientation, gender identity, gender expression, disability, age, proficiency in the English language, religious preference or lack thereof, income, aptitude or academic ability.

**8.9.1 Tuition and fees.** Pursuant to 70 O.S. §3-135(A)(9), the Charter School shall be as equally free and open to all students as traditional public school. Pursuant to 70 O.S. §3-136(A)(10), the Charter School agrees that students and/or parents/legal guardians of students shall not be charged tuition or fees. The prohibition against charging tuition or fees applies to any attempt by the school, the governing body of the school, or employees or contractors of the school, directly or indirectly, to recover costs of offering curriculum based programs of instruction and related services to students.

**8.9.2 Admission by lottery.** In the event the Charter School is required to implement a lottery selection process due to a limitation in enrollment capacity, the Charter School shall provide the Sponsor with an opportunity to have a representative present to monitor and/or observe the lottery proceedings. The Charter School shall provide the Sponsor with notification of the date, time, and location of the lottery no later than five (5) business days prior to the date of the lottery or any related meetings. If a lottery results in generation of a waiting list for enrollment, the Charter School shall provide the Sponsor with a copy no later than five (5) business days after the date of the lottery or any related meeting.

**8.9.3 Verification of residency.** The Charter School agrees that enrollment in the Charter School shall be open to any student who is considered a resident of the State of Oklahoma and who is eligible by age or grade to enroll in the Charter School's program of instruction. The Charter School shall not enroll any student who is not a legal resident of the State of Oklahoma, and shall ensure that verification of residency, enrollment of students, and admission of students is conducted in accordance with the policies and procedures of the Charter School. Such policies and procedures shall include a requirement that the parent/legal guardian of a prospective student sign, in either electronic or handwritten fashion, a form verifying the student's legal address and the accuracy of the information provided in the enrollment application. The form shall also include an acknowledgment that the student is being enrolled in a public school.

**8.9.4 Student support.** During each school year of operation, the Charter School shall have a teacher assigned to each student to provide meaningful student interaction and timely and frequent feedback that is highly individualized and detailed to achieve continued student progress. In addition to the classroom teacher, support services required for student success in online education (i.e., tutors, mentors, and technical assistance) will be provided.

**8.9.5 Student attendance.** The Charter School shall establish a system of accurate logging and recording of student participation in instruction as necessary to monitor and report compliance with the compulsory student attendance provisions of Article 13, §4 of the Oklahoma Constitution, 70 O.S. §3-145.8, 70 O.S. §10-105, and Oklahoma State Department of Education regulations.

**8.9.5.1 Attendance officer.** The Charter School agrees that it will designate an attendance officer as necessary to ensure the Charter School's compliance with all compulsory attendance laws and ensure accurate

recording, maintenance, and reporting of student attendance as required by Oklahoma law.

**8.9.6 State records system.** The Charter School agrees to participate in the state student records system as required by **70 O.S. §3-160**.

**8.10 School year.** Pursuant to **70 O.S. §3-136(A)(11)**, the Charter School shall provide instruction each school year for a least the number of school date or hours required by Oklahoma law, **70 O.S. §1-109** and **1-111(A)**. In the event an emergency, such as severe weather, interferes with the delivery of the program of instruction, student attendance, cancellation of school programs or activities, the instruction shall be conducted in accordance with the Charter School's emergency policies and procedures.

**8.11 Student conduct and discipline.** Pursuant to **70 O.S. §3-136(A)(12)**, the Charter School shall comply with the student suspension requirements set forth in **70 O.S. §24-101.3**, and in accordance with the Charter School's student conduct, discipline, and due process policies and procedures.

**8.12 Employees.** The Charter School shall ensure that employment of the Charter School's personnel is conducted in accordance with all state and federal statutes pertaining to labor and employment, unemployment compensation and worker's compensation, and withholding and reporting of employee wages. In addition, the Charter School shall ensure that employment is conducted in accordance with the Charter School's personnel policies and procedures.

**8.12.1 Oklahoma Teachers' Retirement System.** Pursuant to **70 O.S. §3-136(A)(14)**, if the Charter School elects to participate in the Oklahoma Teachers' Retirement System (OTRS), the Charter School agrees that it will fully comply with all statutes and regulations governing the OTRS.

**8.12.2 Employment contracts.** The Charter School's contracts for services with teachers and school personnel shall comply with the requirements of **70 O.S. §3-135(B)**. On or before August 1<sup>st</sup> of the fiscal year, the Charter School agrees to provide the Sponsor documentation of all compensation (salaries, hourly wages, benefit compensation, bonuses, etc.) paid to each and every employee of the Charter School, including the Chief Administrative Officer/Superintendent.

**8.12.3 Disclosures.** Upon contracting with any teacher or other personnel, the governing body of the Charter School shall, in writing, disclose employment rights of the employees in the event the Charter School closes or is not renewed.

**8.12.4 Instructional personnel.** The Charter School agrees that all individuals employed to teach students shall hold a valid teaching certificate issued or recognized by the State Board of Education or other qualifying credentials as allowed by the Oklahoma Charter School Act.

**8.12.5 Background checks.** The Charter School shall comply with provisions of state law pertaining to background checks of school district employees.

**8.13 Open Meeting Act and Open Records Act.** Pursuant to 70 O.S. §3-136(A)(16), the Charter School and its governing body shall comply with all provisions of the Oklahoma Open Meeting Act at 25 O.S. §301 *et seq.* and the Oklahoma Open Records Act a 51 O.S. §24A.1 *et seq.*

**8.14 Contracts.** Pursuant to 70 O.S. §3-136(D), the Charter School may enter into contracts, sue and be sued.

**8.15 Disposition of property.** Pursuant to 70 O.S. §3-136(F), within sixty (60) days of the date of school closure, or upon failure of the Charter School to continue operations, all real and personal property, obtained by the Charter School with public funds shall revert to the State of Oklahoma, and the Charter School shall ensure execution of any title documents necessary to ensure legal title of such property is transferred to the State. The Sponsor shall not be responsible for any of the Charter School's non-payable warrants, certificates of indebtedness, or financial obligations related to the operation of the Charter School.

**8.16 Inspection.** The Charter School agrees to permit inspections of the Charter School by the Sponsor and Oklahoma State Department of Education as necessary to ensure compliance with the provision of this contract and applicable state and federal law and regulations. Further, the Charter School agrees to respond to requests for documentation by the Sponsor to ensure compliance with the provision of this contract and applicable state and federal law and regulation.

## **9. ASSUMPTION OF LIABILITY**

**9.1 Liability.** Pursuant to 70 O.S. §3-135(A)(6), the Charter School and the Sponsor agree that neither party agrees to indemnify or hold harmless the other party with regard to any loss, damage, or claims arising out of this contract or the operation of the Charter School, unless expressly provided elsewhere in this contract or as expressly stated by state or federal law.

**9.2 Insurance.** Pursuant to 70 O.S. §3-136(A)(13), the Charter School shall be considered an Oklahoma public school district for purposes of the Oklahoma Governmental Tort Claims Act.

**9.2.1 Verification of insurance.** Prior to commencing operations of the Charter School for the school years set forth in this contract and on an annual basis thereafter, the Charter School shall provide the Sponsor with copies of certificates of insurance proving that the Charter School maintains public liability insurance equal to or greater than the limits of liability required in the Oklahoma Governmental Tort Claims Act in 51 O.S. §151. In addition, the Charter School shall provide the Sponsor with copies of certificates of insurance and any other documentation required by the Sponsor with copies of certificates of insurance and any other documentation required by the Sponsor, proving that the Charter School maintains sufficient property and casualty

insurance to cover the value of all property of the Charter School purchased using state, federal or local funds. The Board or Oklahoma State Department of Education may not disburse state aid funds to the Charter School unless and until compliance with the requirements of this Section have been met.

## **10. MODIFICATION, RENEWAL, AND TERMINATION**

**10.1 Modification/Amendment of contract for sponsorship.** All modifications or amendments to the Charter School contract shall require valid written approval by a majority of both the governing body of the Charter School and of the Sponsor. The modification or amendment shall be documented in writing and include the minutes of the board meetings in which the modification or amendment was approved. Failure by the parties to agree on modified or amended terms shall not constitute a basis for invoking rights to dispute resolution, arbitration, or mediation as set forth under the Oklahoma Charter School Act.

**10.2 Renewal of contract.** Renewal of this contract shall be conducted in accordance with the provisions of 70 O.S. §3-137 and the accompanying regulations of the Board in effect as of the date of receipt of the Charter School's application.

**10.3 Termination of the contract.** Termination of this contract shall be conducted in accordance with the provisions of 70 O.S. §3-137 and the accompanying regulations of the Board in effect as of the date of the Sponsor's notification of intent to terminate is received by the Charter School. All costs resulting from any termination of this contract shall be the sole responsibility of the Charter School.

**10.4 Prohibition of assignment.** The Charter School's obligations under this contract may not be assigned, delegated, subcontracted, transferred to, or assumed by any other person or entity, provided that the Charter School may contract with individuals or entities for services necessary to assist the Charter School in fulfilling its obligations under this contract.

## **11. MISCELLANEOUS**

**11.1 Superseding law.** In the event of any conflict between the terms of this contract and provisions of state or federal statutes or regulations applicable to charter schools and in effect at any time during the term of this contract, the terms of this contract shall be deemed superseded by the conflicting statutes or regulations.

**11.2 Entire agreement.** The parties agree that this contract, including all attachments and terms and provisions incorporated by reference, contains the entire agreement between the parties. All prior representations, understandings, and discussions between the parties are merged into, superseded by, and cancelled by this contract.

**11.2.1 Construction.** This contract has been prepared jointly by the parties and shall not be construed more or less favorably with respect to either party.

**11.3 Choice of law.** This contract shall be interpreted and construed in accordance with the laws of the State of Oklahoma, without giving effect to any rule or provision governing choice of law or conflict of laws that would otherwise result in application of the laws of any jurisdiction other than the State of Oklahoma to govern the dispute.

**11.4 Jurisdiction and venue.** Any claims arising from the terms and provisions of this contract shall only be brought in the District Court of Oklahoma County, Oklahoma, or the United States District Court for the Western District of Oklahoma, provided, however, that this provision shall not be interpreted as a waiver of any or all rights of sovereign immunity to which the Board or individual members of the Board may be entitled to exercise.

**11.5 Severability.** In the event a court of competent jurisdiction issues a determination declaring any term or provision of this contract to be void, invalid, and/or unenforceable, the remaining terms and provisions of this contract shall remain in full force and effect.

**11.6 No waiver of breach.** The parties agree that neither express nor implied consent to any breach of any terms, warranties, or covenants of this contract shall waive any succeeding or other breach.

**11.7 Duty to notify.** In the event the Charter School and/or its governing body sues or is named by any individual or entity as a party in a suit or administrative proceeding in any jurisdiction, the Charter School agrees to notify the Sponsor and provide the Sponsor with a copy of the complaint, petition, or other instrument initiating the suit or proceeding within five (5) business days of the date of service upon the Charter School or its governing body. In addition, the Charter School agrees to timely provide the Sponsor with any information concerning the suit or proceeding as may be requested by the Sponsor and as allowed by law.

**11.8 Notice.** All notices required by the provisions of this contract shall be delivered to the address of record for the party. The parties shall be notified of any change in address of record of the other party within five (5) business days of the date of the change in address. The address of record for the parties shall be as follows:

**Notice to the Charter School:** Epic Charter Schools  
4101 NW 122<sup>nd</sup> Street  
Oklahoma City, Oklahoma 73120

**Notice to the Sponsor:** Statewide Virtual Charter School Board  
2500 North Lincoln, Suite 4-37  
Oklahoma City, Oklahoma 73105

**11.9 Incorporation.** The Charter School's Application for Sponsorship and accompanying documents approved by the Board on September 12, 2017, are hereby incorporated by reference. In the event of a conflict between the terms of this contract and the approved terms in the Charter School's Reapplication for Sponsorship, the terms of this contract shall supersede.



## 12. WARRANTIES AND COVENANTS

12.1 The Charter School warrants that it has not entered into an employment contract with any teacher or other personnel prior to the execution of this contract except as otherwise disclosed to the Sponsor.

12.2 The Charter School warrants that it is not affiliated with a nonpublic sectarian school or religious institution.

12.3 The Charter School warrants that it is not chartered for the purpose of offering a curriculum for deaf or blind students that is the same or similar to the curriculum being provided by or for the education of deaf or blind students that are being served by the Oklahoma School for the Blind or the Oklahoma School for the Deaf.

12.4 The Charter School warrants that it shall not be used by the governing body or any other entity as a method of generating revenue for students who are being home schooled or in private school and are not being educated by the Charter School.

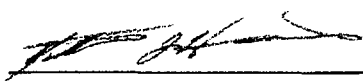
12.5 The Charter School warrants that it has not nor will not make any attempt to levy taxes or issue bonds except as may be allowed by law.

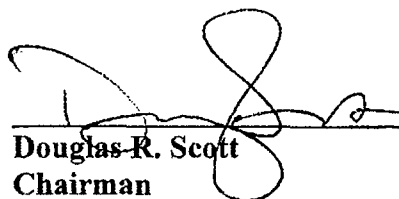
12.6 The Charter School warrants that there is no current, pending, threatened, or anticipated litigation as of the date of the execution of the contract that could reasonably be foreseen to limit or otherwise adversely impact the operations of the Charter School and/or the governing body of the Charter School or the ability of the parties to discharge their duties under this contract.

12.7 The individual(s) signing this contract on behalf of the Charter School warrant and represent that they are authorized to execute this instrument on behalf of the Charter School.

**Sponsor**

**School**

  
\_\_\_\_\_  
**Matthew L. Hamrick**  
**Chairman**  
**Statewide Virtual Charter School Board**

  
\_\_\_\_\_  
**Douglas R. Scott**  
**Chairman**  
**Epic Charter Schools**

4/10/18  
\_\_\_\_\_  
Date

4/18/2018  
\_\_\_\_\_  
Date